



City of Santa Barbara

Police Department

Memorandum

DATE: April 28, 2011

TO: Fire and Police Commission

FROM: Holly Perea, Police Technician

SUBJECT: Nightclub Dance Permit: "TonyRay's Restaurant", 731 De La Guerra Plaza

DISCUSSION:

On February 8, 2011, Bea Molina submitted an application for a nightclub dance permit to the Santa Barbara Police Department on behalf of Gloria Gonzalez, sole owner of the business at 731 De La Guerra Plaza, dba "TonyRay's Restaurant."

The applicant received all necessary approvals from Community Development for the dance permit, and submitted the required security and noise mitigation plans. Notices were distributed to nearby properties and posted on the premise in accordance with the Santa Barbara Municipal Code requirements and deadlines. Fingerprint results for the owner and both managers have been received by the Police Technician. All results satisfactorily meet Santa Barbara Municipal Code requirements.

Security guards will be dressed in black branded shirts with the word "security" on the back and front of the shirts, and will wear matching slacks. The guards will communicate with one another verbally.

On March 30, 2011 Santa Barbara Police Department staff conducted a site visit. General Manager Bea Molina and the owner's son, Tony Gutierrez, were present to host the walkthrough. The following information was learned during this visit:

- The premise has 4 speakers: 2 on the exterior and 2 on the interior.
- The business has 3 security cameras: 1 on the premise exterior and 2 on the premise interior. Video footage from the cameras is stored for 6 months.
- According to the application, dancing will take place between 9:00 am and midnight on Tuesdays and Wednesdays, and between 10:00 am and 1:00 am Thursday through Sunday. During the walkthrough however, the requested time frame for dancing was verbally updated to include all hours from business opening through 1:30 am daily.
- The owner plans to have 3 security guards on duty nightly during hours of dancing.
- During the walkthrough, staff confirmed that the applicant desires to have the following forms of entertainment: amplified DJ, amplified live entertainment, ambient/background music, and some acoustic music. The hours requested for the entertainment are from the opening of the business until 1:30 am daily.

Per the Santa Barbara Fire Department, the approved occupancy load of the interior of the premise, without tables and chairs, is 44 persons. According to Santa Barbara Municipal Code **§5.20.170 No Outdoor Dancing – Nightclub Permits** "No outdoor dancing may be permitted under a Nightclub Dance Permit or Live Entertainment Dance Permit issued for a location within the City's Entertainment District." Therefore, applicants request that the entire interior service area be approved for dancing.

In the course of reviewing the application it was discovered that the previous owners of this location applied for a dance permit in 2004, under the dbas "Papagallos" and "El Cazador." At that time City staff deemed the premise interior too small and unsuited for dancing. In 2004 the Santa Barbara Municipal Code did not prohibit outdoor dancing as it does now, but it was a common practice for premises within the Entertainment District to have a restriction prohibiting outdoor dancing due to area noise concerns. As a result, the Santa Barbara Police Department recommended denial of the permit (Attachment 1), and the Fire and Police Commission agreed with the recommendation, thereby denying the application. Applicants filed an appeal of the Commission's decision with City Council, and a hearing was held in December 2004, after which the presiding City representative recommended that the denial be upheld. In January 2005, Jim Armstrong, the City Administrator, upheld the denial (Attachment 2). No significant structural or configuration changes have been made to the premise since that finding.

During the period in which the pending dance permit application was being processed at the Santa Barbara Police Department, on March 5, 2011 at approximately 12:30 am, SBPD officers were dispatched to TonyRay's Restaurant for a complaint of excessive noise. Upon arrival, officers discovered a disc jockey with large portable speakers set up on the patio playing music loudly, and approximately 6 or 8 of the patrons on the patio dancing to the music. Anthony "Tony" Gonzalez, the person identified as the manager that evening, was issued a warning for excessive noise and for allowing dancing on premise without a City-issued dance permit.

The next night, March 5, 2011 at approximately 11:45 pm, officers were again dispatched to TonyRay's based on a complaint of excessive noise. Manager Tony Gutierrez was contacted by officers and confirmed that there had been music and dancing on the outdoor patio area again that night. (Attachment 3)

The premise has a license to serve alcohol issued by the Department of Alcoholic Beverage Control. There are 11 conditions on that license, the first three of which are:

1. Entertainment provided, including but not limited to recorded music, radio, television and live entertainment shall not be audible beyond the area under the control of the licensee(s), as depicted on the ABC-257 dated 6-29-10.
2. There shall be no dancing permitted on any patio or outdoor area.
3. The use of any amplifying system(s) or device on the patio or any outdoor area is prohibited after 11:00 PM each day of the week.

As a result of the above incidents, ABC currently has pending disciplinary action against the premise for multiple violations of the premise's ABC liquor license conditions.

RECOMMENDATION:

Based on the cumulative facts outlined above, it is the recommendation of the Santa Barbara Police Department that the request for a dance permit for TonyRay's, located at 731 De La Guerra Plaza, be denied.